Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MND MNDC O FF

Introduction

This hearing convened on June 27, 2012 for ninety minutes and reconvened for the session on July 19, 2012 for 40 minutes to hear the matters pertaining to the Landlords' application for dispute resolution.

The Landlords applied seeking a Monetary Order for unpaid rent, for damage to the unit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for other reasons, and to recover the cost of the filing fee from the Tenants for this application.

Preliminary Issues:

At the outset of the hearing the parties confirmed they first entered into a tenancy agreement that began on September 1, 2011 and was scheduled to end on August 31, 2012 for the basement suite. The Landlord had insisted the three male occupants not be listed as tenants on the agreement as they did not have an income and requested that only two of their parents be listed as tenants.

Shortly after the start of the tenancy the male occupants began to experience problems with the basement suite and on September 10, 2011 the parties mutually agreed to end this tenancy and entered into a new tenancy agreement to occupy the main floor rental unit.

Upon review of the tenancy agreements submitted into evidence by the Landlords I found the Landlord had attempted to blend the two agreements into one by backdating the start date of the tenancy agreement for the main floor unit to September 1, 2011. Tenancy agreements cannot be blended when they involve two separate self contained rental units. Therefore, I find the fixed term of the tenancy agreement for the main floor unit to have begun on September 10, 2011 and is scheduled to end on August 31, 2012.

Upon review of the application for Dispute Resolution the Landlords confirmed they had included claims for monetary compensation which relate to both tenancies. After explaining that separate tenancies cannot be combined on one application the Landlords wished to proceed with the items which pertained to the tenancy agreement

involving the main floor rental unit and withdrew their request for carpet cleaning and plumbing costs relating to the basement suite tenancy.

Issue(s) to be Decided

1. Are the Landlords entitled to a Monetary Order?

Background and Evidence

The parties acknowledged receipt of evidence submitted by the other however the Landlords noted they received the Tenants' evidence in two separate packages; one on June 19th and the other on June 20th. The Landlords submitted that the second package was received outside of the required timeframes. They acknowledged that they were able to review all of the evidence and were prepared to proceed with today's hearing.

The Landlords submitted invoices for yard maintenance of $268.00 and argued that the Tenants agreed to the tenancy agreement addendum, paragraph 8, which stipulates:

> *Tenant is responsible for up-keep, cleaning and proper maintenance of house including front and backyard, stove, refrigerator, floor, sinks, toilet seats, washer, dryer, etc.*

The Landlords confirmed the addendum required these Tenants to maintain all of the lawns and yard even though there were two separate rental units on the property. They submitted that they had had a conversation with the Tenants at the time the agreement was signed whereby they advised they had a landscaping company who was currently providing services at their other rental locations and who could perform the work at this rental unit.

The Tenants acknowledged that the addendum required them to complete the yard maintenance however they did not agree to pay for a professional landscaping company to complete the work. They argued that they heard nothing from the Landlords about yard maintenance until April 4, 2012, seven months after the start of the tenancy. They note that they began to have problems with the Landlord mid March and then filed their application for dispute resolution April 16, 2012, so they are of the opinion that this claim is retaliatory to their application.

The Tenants questioned the validity of the landscape invoices submitted into evidence by the Landlord as they noted that the amounts claimed are different than the amounts previously requested by the Landlords, as supported by the e-mails provided in their evidence, and the two invoices are sequential which means they were written at the same time.

The Landlords are seeking to recover $65.23 for the cost of a plug-in heater which they argued was provided to Occupant (2) on March 16, 2012 and not returned. They submitted a receipt into evidence dated October 18, 2011 for a garrison ceramic heater.

The Tenant and Occupant (2) argued they were never provided with a heater. They refuted the Landlords' submission while pointing out they were previously awarded compensation for the Landlord having them live without heat for three days during the transition from oil to electric heat. If they were provided with a heater they would not have been awarded compensation for living "without heat".

The Landlords asserted that the Tenants caused them to have to undergo unnecessary electrical inspections which cost $225.00 when the occupant's father and the Tenant complained to the Provincial Electrical Inspector about exposed wires and/or the presence of asbestos. The Landlords advised that they received a call from either the Provincial Inspector or their Municipality instructing them to have a licensed electrician inspect the property. They stated they have a general contractor who oversees the work of trade's people at their properties which is supported by their Tradesperson's invoice which references the electrician's invoice. They confirmed they do not have a copy of the electrician's invoice, even though they state they were the ones who paid it. They did however submit the Electrician's invoice into evidence an invoice dated April 17, 2012 which included the inspection costs, as well as a letter from the electrical company outlining a chronological list of visits and work performed.

The Tenants' Agent confirmed he was the one who called the municipality and spoke to a by-law officer. He also spoke with the Provincial Electrical Inspector to inquire about electrical wiring. It was during these conversations that he was told that no permits had been applied for or issued in regards to the renovations that were being conducted at the rental unit. He submitted that it was the Provincial Inspector who demanded an inspection as the Landlord had begun work without the proper permits and therefore they believe the Landlord has the responsibility to cover these costs and not the Tenants.

The Landlords seek to recover $134.40 for costs incurred when the Occupants told the Landlord's plumber to leave the rental property. These charges relate to fees incurred for two hours at $60.00 per hour plus HST for the Landlords' contractor to attend the rental unit and deal with the plumber.

The Occupants submitted that they were advised by the Landlords that there were no contractors scheduled to attend the rental unit. Then two days later they noticed someone in the yard. The Landlord told them that no plumber had been hired so they approached this person and asked what he was doing on the property and requested the name of the company who he worked for. This person refused to provide the Occupants with information about his employer or what he was doing on the property so the Occupants requested that he leave.

The Landlords stated they were of the opinion that they only had to provide the Tenants notice when someone needed access inside the rental unit. They advised they did not know they were required to provide the Tenants with notice of people coming onto the property, they confirmed that no notice was provided to the Tenants regarding this visit, and they requested that I provide this information in my decision.

The Landlords seek a total of $450.00 as compensation for dealing with four threatening phone calls and for their time in having to deal with complaints from neighbours about loud parties. They confirmed that they did not call the police in response to the alleged phone calls or parties; rather they chose to seek legal advice instead.

The Tenant, Agent, and Occupants refuted these allegations of threats and noise disturbances. The Agent confirmed calling and leaving messages and when his calls were not returned he called again and left another message but he said nothing threatening. They noted how their evidence included references from neighbours which indicate they have been good occupants and they noted that there have never been any police complaints.

Analysis

Upon review of the Tenants' submissions I find they acted in a reasonable manner in getting their evidence to the Landlords as soon as possible. The Landlords were in receipt of the Tenants' evidence seven calendar days and four clear business days prior to the hearing and have acknowledged that they have had time to review all of the evidence. Therefore, I have considered all evidence submissions in my decision, pursuant to *Rule # 11.85* of the *Residential Tenancy Branch Rules of Procedure.*

Section 5 of the Act stipulates that parties to a tenancy cannot contract out of the Act and any attempt to avoid or contract out of the Act is of no effect.

A tenancy agreement is defined by the act as an agreement between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rent unit.

Section 3 of the Act provides that a person who has not reached 19 years of age may enter into a tenancy agreement or a service agreement, and the agreement, the Act, and the Regulations are enforceable by and against the person despite section 19 of the *Infants Act.*

In this case the Landlords were insistent that the tenancy agreement list two parents as the Tenants even though the Landlord new from the outset that the three young males would be occupying the rental property and not their parents. Furthermore the Landlords restricted the number of Tenants listed on the agreement to two even though they knew there were three unrelated males going to live in the rental unit.

It is evident that the Landlords listed the parents as tenants in their attempts to seek security for the tenancy agreement while avoiding listing the three male occupants, who were in fact the intended tenants. While there is nothing preventing a landlord from obtaining signatories to a tenancy agreement in addition to the actual tenants, I note that a landlord puts themselves at risk by not listing the actual tenants to a tenancy agreement because occupants *(those not listed as tenants on the agreement and who reside in the rental unit)* have no obligations or rights under the *Residential Tenancy Act.*

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, the Landlords have the burden to prove the Tenants agreed to have the responsibility of yard maintenance transferred to the Landlords' landscaping company and that the Tenants agreed to pay for this service. Accordingly, the only evidence before me was disputed verbal testimony which I find insufficient to meet the Landlords' burden of proof. Therefore I dismiss the Landlords' claim for $268.00 for yard maintenance.

The Landlords seek to recover $65.23 for the cost of a heater they purchased October 18, 2011. The receipt is evidence that the Landlords purchased a heater but does not prove they loaned this heater to the Occupants six months later. The Tenant and Occupants deny being given a heater and point out they would not have been awarded compensation for having to live without heat if they had the heater. Therefore, in the absence of proof to the contrary, I find the disputed testimony insufficient evidence and I dismiss the Landlords' claim of $65.23.

In determining the Landlord's claim of $225.00 for electrical inspections I prefer the evidence of the Tenant and Agent over the Landlord's testimony because the Landlords' evidence contradicts their own testimony. Specifically: the Landlords stated they did not have a copy of the electrician's invoice, yet one was provided in their evidence. The Landlords alleged that an electrical permit had been issued prior to the start of the work however they did not provide a copy of the permit into evidence. The Agent was

forthright in acknowledging that he contacted the Municipality and the Provincial Electrical Inspector who advised him that permits had not been issued for the rental unit; and the Landlords confirmed the inspections were ordered by the Provincial Electrical Inspector.

Section 32 of the Act stipulates that the **landlord** must provide and maintain a rental unit in a state of repair that complies with health, safety and housing standards required by law [emphasis added]. Accordingly, I find the costs of the inspections ordered by the Provincial Electrical Inspector to be the responsibility of the Landlords and their claim for $225.00 is dismissed.

Section 28 of the Act provides for a tenant's right to quiet enjoyment and exclusive possession of the rental unit and use of common areas, which includes the exterior yards and parking areas, free from significant interference and subject only to a landlord's right to enter in accordance with section 29 of the Act. Sections 28 and 29 of the Act have been reproduced at the end of this decision.

The Landlords seek $134.40 for costs incurred when the Landlord failed to provide 24 hour written notice to the Tenants that a plumber would be attending the property to conduct inspections and measurements. In this instance I find the Tenants were acting within their rights when they questioned the plumber and asked him to leave as the Landlord breached section 29 of the Act by failing to provide 24 hour written notice. Accordingly, I dismiss the claim for $134.40.

The *Residential Tenancy Policy Guideline # 6* clarifies the right to quiet enjoyment and states:

> *the covenant of quiet enjoyment "promis(es) that the tenant ... shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant's right to freedom from serious interferences with his or her tenancy.* ***A landlord does not have a reciprocal right to quiet enjoyment.*** [emphasis added]

The Landlord seeks compensation of $450.00 ($250.00 + $200.00) for conducting the Landlords' business in dealing with phone calls and dealing with neighbours' complaints about parties. The Act does not provide a remedy for monetary compensation to a landlord for loss of the landlord's quiet enjoyment or for conducting a landlord's business. The remedy provided to a landlord under the Act for dealing with continued complaints, if warranted, would be eviction under section 47 of the Act. Therefore I dismiss the Landlord's claim of $450.00.

The Landlords have not been successful with their application; therefore I find the Landlords must bear the costs of filing this application.

Conclusion

I HEREBY DISMISS the Landlords' claim, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 16, 2012.

Residential Tenancy Branch

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).